INDEX

Subject Index

	Page
Caption	1
Opinions below	2
Jurisdiction	2
Questions presented	2
Statutory and constitutional provisions involved	3
Errors imputed to the District Court of Arecibo and the Supreme Court of Puerto Rico	4
Proceedings in the United States Circuit Court	5
Statement	7
Specification of errors	14
Reasons for granting the petition and authorities in support thereof	14
Conclusion	25
Appendix	26

Cases and Authorities Cited

(1) Cases

Baetjer v. *Registrar*, 48 P. R. R. 627	23
Bonet v. *Texas Co.*, 308 U. S. 463	14
California Bank v. *Kennedy*, 167 U. S. 362	19
Calumet, etc. Dock Co. v. *Conkling*, 273 Ill. 318	19
Caroll v. *City of East St. Louis*, 67 Ill. 568	22
Catholic Congregation v. *Germain*, 104 Ill. 440	22
Central Boca Chica v. *Treasurer*, 54 P. R. R. 404	18
Central Transportation Co. v. *Pullman's Palace Car Co.*, 193 U. S. 24	18
Cía Azucarera de Carolina v. *Reg. Prop.*, 19 P. R. R. 143	5, 23
City of Paris v. *Kentucky Utilities Co.*, 133 S. W. (2d) 559	25
Congress Cigar Co., Inc. v. *Grau*, 44 P. R. R. 626	15
Compton v. *Moore*, 156 Ky. 544	23
Cornell University v. *Fiske*, 111 N. Y. 66, 136 U. S. 152	23

Page

Cumberland Lumber Co. v. *Tunis Lumber Co.*, 171 Fed. 352 16
De la Vergne Co. v. *German Savings Inst.*, 175 U. S. 40 ..... 19, 22
Fitzsimons v. *Eagle Brewing Co.*, 107 F. (2d) 712 25
Freiría Co., Ltd. v. *R. Félix Hnos. & Co.*, 20 P. R. R. 148 15
F. Zayas S.en C., v. *Torres*, 51 P. R. R. 772 17
González et al. v. *Fumero et al.*, 38 P. R. R. 497 .....
Hanchey v. *Southern Home Building and Loan Assn.*, 37 So. 272 19
Hanna v. *Kelsey Realty Co.*, 129 N. W. 1080 23
Heiligenstein v. *Schlotterbeck*, 133 N. E. 188 23
Henderson v. *Skinner*, 59 A. L. R. 174 18
Hernández Mena v. *Foote*, 22 P. R. R. 705 16
In re Garden City Parlor Furniture Co., 268 Fed. 318 19
In re Haywood Wagon Co., 219 Fed. 655 16
In re Hool Realty Co., 2 F. (2d) 334 23
Kappers v. *Cast Stone Const. Co.*, 200 N. W. 376 19
Kennet v. *Kidd*, 125 P. 36 23
Levison v. *Boas*, 12 L. R. A. (N. S.) 575 23
Lloveras et al. v. *Landrón et al.*, 37 P. R. R. 335 16
Longpre v. *Díaz*, 237 U. S. 512 ..... 3, 17
Martínez v. *Figueroa*, 50 P. R. R. 908 ..... 11, 15
McCormick v. *Market Bank*, 165 U. S. 538 23
Meléndez v. *Registrar*, 58 P. R. R. 328 17
Meyer v. *Meyer*, 79 F. (2d) 55 24
National Home Building Assn. v. *Banck*, 181 Ill. 318 19
Oliver et al. v. *Oliver*, 23 P. R. R. 168 17
Oregonian Railway Co. v. *Oregonian Ry. Co.*, 130 U. S. 1 19
People v. *Fajardo Sugar Co.*, 51 P. R. R. 851 21
People v. *Rubert Hnos., Inc.*, 53 P. R. R. 741 21
Perkins Mfg. Co. v. *Clinton Const. Co.*, 295 P. 1 23
Procter v. *Board of Trustees of M. E. Church*, 123 N. W. — 23
Puerto Rico v. *Rubert Co.*, 309 U. S. 543 .....
Ramos v. *Selles Casas & Co. et al.*, 37 P. R. R. 566 15
Rodriguez et al. v. *Alonso et al.*, 37 P. R. R. 322 ..... 16, 17

Page

Román v. *Municipal Court*, 59 P. R. R. 483 18
Sola v. *Castro et al.*, 32 P. R. R. 740 16
South & N. A. R. Co. v. *Highland Ave. and T. R. Co.*, 24 So. 115 23
Stevens v. *Boyes Hot Springs Co.*, 298 P. 508 21
Tate v. *Gaines*, 105 P. 193, 26 L. R. A. (N. S.) 106 (Okla. 1909) 20
Texas & Pacific Ry. v. *Pottorff*, 291 U. S. 245 24
Travieso v. *McCormick*, 54 P. R. R. 312 17
United States v. *Beebe*, 180 U. S. 343 17
Vias v. *Estate of Perez et al.*, 15 P. R. R. 715 15
Williams v. *Merchant's National Bank of St. Cloud*, 42 F. (2d) 243 20
Wood v. *Hammond*, 17 A. 324 23
Zapater v. *Irizarry et al.*, 15 P. R. R. 526 15

(2) Textbooks and Commentaries

American Jurisprudence:
Vol. 7, Page 27 19
Vol. 30, Page 898 25
Ruling Case Law:
Vol. 6, Pages 701-702 ..... 20, 21
Manresa: Commentaries of the Civil Code:
Vol. 8: Page 638 22
Page 803 .....
Page 804 18
Page 807 20
Scaevola: Commentaries of the Civil Code:
Vol. 20, Page 577 20

(3) Statutes

Federal Statutes:
Organic Act of Puerto Rico of 1917 2
Joint Resolution No. 23, of the Congress of the United States, of May 1, 1900 ..... 4, 18, 19
Fourteenth Amendment to the United States Constitution 3
Judicial Code (28 U. S. C. A. 347) 2

Page

Statutes of Puerto Rico:
Private Corporations Law (1911):
Section 3 ..... 2, 4, 19, 21, 29, 30
Section 4 ..... 4, 18, 28
Section 7 ..... 4, 31
Public Law No. 47 (SP. Ses. 1935) 24
Civil Code (1930 Edition):
Section 4 ..... 28, 30
Section 159 ..... 4, 17, 18, 28
Section 160 ..... 4, 17, 18, 29
Section 1206 21
Section 1207 21
Section 1213 ..... 18, 20, 22
Section 1214 ..... 20, 22
Section 1215 20
Section 1223 22
Section 1863 17
Section 1864 17
Code of Civil Procedure (1932 Edition):
Section 89 ..... 3, 15, 26
Section 128 17
Section 194 ..... 3, 26
Section 240 ..... 3, 15, 27
Section 253 ..... 3, 16, 27

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 735

ELISA CAMPOS DELGADO, ET AL.,
Petitioners,

vs.

CENTRAL CAMBALACHE, INC., ET AL.,
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

To the Honorable Justices of the Supreme Court of the United States:

Now come the petitioners in the above entitled cause, and respectfully pray that a writ of certiorari may issue to review the decision of the Circuit Court of Appeals of the United States, for the First Circuit, entered August 1, 1945, in the case between the above named parties, and three other cases which were consolidated for docketing and hearing, under No. 4094 of the Circuit Court. This decision affirmed the findings of the Supreme Court of Puerto Rico, dismissing the complaints in all the four causes which were consolidated therein for hearing, thereby

affirming the judgments of the District Court of Arecibo in all the cases, and partly reversing Campos Delgado's case.

Opinions Below

The findings and opinions of the District Court of Arecibo are printed in the record, pp. 30-39. The opinion of the Supreme Court of Puerto Rico is officially reported in 64 D. P. R. 58 (English edition of the Puerto Rico Reports has not yet been published), and printed in the record, pp. 272-291. The opinion of the Circuit Court of Appeals for the First Circuit has not yet officially been reported, but it appears in pp. 412-413 of the transcript of record.

Jurisdiction

This court has jurisdiction to review said decision under United States Code, Title 28, Sec. 347.

The judgment of the Circuit Court was entered August 1, 1946, and within three months from this date petitioners prayed the lower court for a stay of mandate, the printed record was duly certified and forwarded to the clerk of this Supreme Court, and the time for filing this petition was extended to Nov. 15 of this year, and further extended to Nov. 30, 1946.

Questions Presented

1. Is there a substantial federal question presented by the appeals from the Supreme Court of Puerto Rico to the Circuit Court of Appeals, for the First Circuit, in these causes, wherein the interpretation and application of Sec. 3 of Joint Resolution, of the Congress of the United States, of May 1, 1900 (31 Stat. 715, 716), as embodied in Sec. 39 of the Organic Act of Puerto Rico, approved March 2, 1917 (39 Stat. 951-964)—The so called "500 Acre Law" —, and, if the interpretation and application of said pro-

vision presents such a federal question, does the violation of its restriction upon corporate ownership and control of land, give rise to an action by a grantor against a corporation for the annulment of the latter's title to land conveyed to, and held by it, in excess of the limitations imposed?

2. The Legislative Assembly of Puerto Rico, in the exercise of its delegated powers has provided a due process of law to abate, upon cause and sufficient notice, the property rights of defaulting debtors, who do not appear in court to defend against timely action for the collection of their debts. A disregard of the mandatory language of said provisions (Sections 89 and 194, of the Code of Civil Procedures of Puerto Rico, dealing with summons and default judgments, and Sections 240 and 253, of the same Code, relative to the execution of money judgments, and the sale of debtors' property in satisfaction thereof) is it not a denial of due process of law, under the 14th Amendment to the Constitution of the United States?

In the Campos Delgado case a clear derogation of those provisions was fully presented (T. R. 7-12).

3. In construing and applying Secs. 89, 194, 240, 253 of the Code of Civil Procedure of Puerto Rico, the Supreme Court of the Island went against its traditional interpretations of these provisions, and unwarrantedly reversed the findings of the District Court of Arecibo, in the Campos Delgado case (T. R. 283-290), thereby depriving a minor of his legal rights, in open violation of the principles established in *Longpre* v. *Díaz*, 237 U. S. 512.

Isn't this decision clearly erroneous?

Statutory and Constitutional Provisions Involved

Sec. 89, 194, 240 and 253 of the Code of Civil Procedure of Puerto Rico (1933 edition).

Secs. 4, 159 and 160 of the Civil Code of Puerto Rico (1930 edition).

The Fourteenth Amendment to the Constitution of the United States.

Joint Resolution No. 23, of the Congress of the United States, of May 1, 1900 (39 Stat. 715, 716) as later embodied in Sec. 39 of the Organic Act of Puerto Rico of March 2, 1917 (39 Stat. 951, 964).

Paragraphs 4 and 8 of Section 3, Section 4 and paragraphs 4 and 7 of Section 7, of the General Corporation Law of Puerto Rico (Laws of 1911, p. 87).

Secs. 2 and 6 of Act No. 47, approved by the Legislature of Puerto Rico, August 7, 1935 (Special Session, p. 530).

The relevant parts of these provisions are set out in the appendix (*infra*, pp. 26-32).

Errors Imputed to the District Court of Arecibo and the Supreme Court of Puerto Rico

The Errors incurred into by both the District Court of Arecibo, and the Supreme Court of Puerto Rico, are given in detail in the Statement of Points, as amended, contained in pages 405 to 410, both inclusive, of the Transcript of Record. In the discussion of these errors, plaintiffs appellants shall endeavor to show that: (a) corporations devoted to agriculture in Puerto Rico have no legal power to lend money; (b) the loans made by defendant appellee to Gonzáles Cabeza were not crop loans; (c) these loans could not be the basis of a legal judgment; (d) the judgment entered by the clerk of the District Court of Arecibo, against the widow and heirs of González Cabeza, and the execution sale of the litigated farms to defendant appellee's subsidiary, Oliver, Matienzo & Cía, S. en C., are null and void; (e) defendant appellee bought more land, under the execution sale, than had been given by González Cabeza as

security for the loans; (f) the deed of sale of the litigated farms to Oliver, Matienzo & Cía, S. en C., and the deed of August 26, 1927, whereby plaintiff appellants were supposed to have ratified the void judicial proceedings, were not admissible in evidence, and the latter is not a validation of them; (g) there is no evidence in the record showing that the attorney who appeared before the marshal at the execution sale, was authorized to act in behalf of petitioners, who were in default; (h) petitioners were not late in bringing their action; (i) minor José Antonio González Campos has not ratified the judicial proceedings, nor the deed of August 26, 1927; (j) Central Cambalache, Inc., has no title, nor the right, to retain the litigated farms, because when it attempted to acquire them it had already under its control and ownership more than 500 acres of land; (k) the right to invalidate the titles of Central Cambalache, Inc., to the litigated farms belongs to petitioners, who are not estopped to claim their invalidity; (l) the cases of *Cía Azucarera de Carolina* v. *Reg. Prop.*, 19 P. R. R. 143 (1913), and those following, dealing with the question of the validity of titles to lands of agricultural corporations, owning and possessing more than 500 acres, are not applicable to the facts of these causes; (m) Central Cambalache, Inc., is not entitled to the return of the money loaned, and in case it should have the right to ask for such a relief, it did not do so, and (n) it has no right to any compensation.

Proceedings in the United States Circuit Court

The decisions of the Supreme Court of Puerto Rico were brought for review before the Circuit Court for the First Circuit, and by order of the Court, issued Dec. 14, 1944, all the causes were consolidated for hearing and docketing.

A Statement of Points was filed, June 27, 1945, and a motion to dismiss the appeals was filed. *This motion was denied Sept. 7, 1945.*

The record was printed and an Amended Statement of Points was filed March 1, 1946.

The case was heard on July 11 of this year and on August 1, 1945, the court rendered the following opinion:

> "The only substantial question presented by these appeals having even a savor of federal law is whether violation of the restrictions upon corporate ownership and control of land originally enacted by Section 3 of the Joint Resolution of May 1, 1900 (31 Stat. 715, 716) and later embodied in Section 39 of the Organic Act of March 2, 1917 (39 Stat. 951, 964) the so called '500 Acre Law' gives rise to an action by a grantor against a corporation for annulment of the latter's title to land conveyed to and held by it in excess of the limitations imposed. Upon analysis, however this is not a question of federal law for the reason that the Supreme Court of the United States in *Puerto Rico* v. *Rubert Hermanos, Inc.*, 309 U. S. 543, determined that Congress having 'affixed no direct consequences to disobedience of its policy for Puerto Rico,' gave the Insular Legislature full power to say how its 'policy was to be realized.' Hence the Supreme Court of Puerto Rico in the instant case decided a question of purely local law when it interpreted the insular statute, implementing, Sec. 39 of the Organic Act, supra (Act No. 33 of July 22, 1935, Laws of Puerto Rico, Special Session, 1935, p. 418) as 'realizing' the Congressional policy by providing for enforcement thereof only by an information in the nature of Quo Warranto brought against the offending corporation in the insular Supreme Court by the Attorney General acting in the name of the People of Puerto Rico, so that in consequence the title of a corporation to lands held by it 'in violation of the act is valid against everyone except against The People of Puerto Rico and if the latter does not institute the proper proceeding against the corporation not only does it hold the valid title but it may also convey it validly to any other person.'
>
> "Seeing no clear or manifest error in this interpretation of the insular statute, or in the answers of the

Supreme Court of Puerto Rico to any of the other questions of local law presented, and finding the opinion below fully, adequately and carefully reasoned, we see no occasion to recapitulate that reasoning in a full length opinion of our own."

Statement

Facts

The Complaint

The original complaint in the *Campos Delgado* case was filed in the District Court of Arecibo, Puerto Rico, on February 1, 1941. Defendant Central Cambalache, Inc., demurred to the complaint, and plaintiffs were granted leave to amend. A second amended complaint was filed on February 9, 1942 (T. 1-16), and Central Cambalache, Inc., filed its answer on April 25, 1942 (T. 21-30).

Plaintiffs are the widow and the heirs of Fernando Ganzález Cabeza (T. 2); and defendant Central Cambalache, Inc., is a domestic corporation, engaged in agriculture in Arecibo, Puerto Rico, and, since 1912, has under its ownership and control over five hundred acres of land (T. 1). Juan González Campos is also an heir of González Cabeza, but he did not want to become a plaintiff and, being a necessary party to the suit, has been brought in as a defendant (T. 2-3). González Cabeza and his wife, in the year 1920, acknowledged themselves to be indebted to defendant corporation, for purposes foreign to the corporation's business, to the extent of two loans, one for $25,000 and the other $14,000, which they agreed to pay, with interest, at the rates of nine and eight per cent per annum, respectively, and for the security of which they executed two mortgages upon thirteen farms which they had (T. 6-7). Central Cambalache, Inc., under the law or its charter, could not make such loans (T. 13-14):

González Cabeza died, and on December 15, 1925, Central Cambalache, Inc., brought an action against his heirs and widow, before the District Court of Arecibo (T. 7), to recover the amount of $56,574.07, principal and interest of the loans then due. Plaintiffs were served with process and did not appear (T. 7-8), their default was noted and judgment entered by the clerk (T. 10), ordering plaintiffs to pay the amounts claimed by Central Cambalache, Inc., an order was issued for the execution of the judgment (T. 11), and the mortgaged farms were sold at public auction to the only bidder, Oliver, Matienzo & Cía., S. en C. —*a sociedad*—, a dummy or a subsidiary for Central Cambalache, Inc. (T. 12-13), created for the sole purpose of aiding Central Cambalache, Inc., in its evasion of the limitations contained in the Organic Act of Puerto Rico, relative to the ownership and control of agricultural lands. Andrés Oliver, José Matienzo and Angel Sánchez, members of the sociedad, were officials, directors, and stockholders of Central Cambalache, Inc. (T. 12); on January 11, 1932, the sociedad transferred (T. 12) the farms bought at the execution sale to defendant corporation.

Plaintiffs appellants allege that the judicial proceedings for the collection of the loans, the judgment entered thereunder, and the sale of the farms at public auction (T. 11-12), were null and void, and the title of Central Cambalache, Inc., to those farms is null and void, because of jurisdictional defects in the proceedings under which it acquired them (T. 13-14), and because of the corporation's lack of capacity to make loans (T. 14) and to purchase and own the litigated farms, and they pray for the return of the farms to them and for judgment against the corporation in the amount of $125,000 for mesne profits, plus costs and attorney's fees.

The Answer

Defendant Central Cambalache, Inc., alleges that there are no defects in its title (T. 23); that Oliver, Matienzo & Cía., S. en C., was not its subsidiary or dummy (T. 24); that it has full legal capacity to lend money (T. 25) and to acquire lands (T. 25), and that it has not received *mesne profits* as claimed.

As affirmative defenses, it pleads that the widow and heirs of González Cabeza ratified all the proceedings relative to the judgment by default entered against them, because plaintiffs appellants appeared before the marshal of the District Court and asked their farms to be sold en masse (T. 26); and that the sale at public auction of the litigated farms to the *sociedad* has been ratified by the heirs of González Cabeza who were of age, and his wife (T. 26-27), per notarial deed executed on August 26, 1927, and by plaintiff José Antonio González Campos, who was then a minor (T. 27), by his own acts after becoming of age.

Trial and Decision

The trial of the issues was begun on October 29, 1942, and after some continuance, the case was finally submitted on December 11 of that year. The District Court of Arecibo, Puerto Rico, Honorable Ricardo Agrait Aldea, Judge, rendered judgment on February 23, 1943, for plaintiffs José Antonio González Campos against Central Cambalache, Inc., and dismissed the complaint as to plaintiffs Elisa Campos Delgado, Fernando González Campos, Angelita González Campos, and defendant Juan González Campos.

In his opinion the trial judge found proven: That plaintiffs were the widow and heirs of Fernando González Cabeza (T. 30), and the litigated farms belonged to them; that González Cabeza and his wife had borrowed money from

Central Cambalache, Inc. (T. 31), on the dates and in the amounts stated in the complaint; that defendant corporation had filed an action in the District Court of Arecibo, Puerto Rico (T. 31), against the heirs and widow of González Cabeza for the recovery of the debt; that the summons issued by the clerk of the District Court, to bring the heirs and widow of González Cabeza into court (T. 31) did not warn them of any specific amount for which judgment would be entered in case of their default, and that in spite of this deficiency the clerk gave jurisdiction to himself and entered judgment by default against defendants therein and in favor of the corporation, in the amount claimed, with interest at the stipulated rates until said judgment would be wholly paid (T. 32); that under such judgment the clerk issued execution for the amount claimed (T. 32), plus interest at the rate of nine per cent yearly, even though such interest had not been agreed upon for one of the loans, and that under such order of execution the farms were sold to Oliver, Matinezo & Cía., S. en C. (T. 32); that this *sociedad* was a subsidiary of defendant corporation (T. 32); that Central Cambalache, Inc., is an agricultural and industrial corporation (T. 33), which at the time it acquired the litigated farms, and since 1912, has had under its ownership and control over five hundred acres of land (T. 33), and that, either per se, or through its subsidiary, defendant corporation had received the amount of $96,000 (T. 33-34) for mesne profits of the farms.

In connection with the affirmative defenses interposed by defendant corporation, the District Court found that the widow and heirs of González Cabeza had, on August 26, 1927, executed to Oliver, Matienzo & Cía., S. en C. (T. 32-33), a deed of transfer of certain movables, cattle and crops standing on the litigated farms, and waived in favor of the *sociedad* all their rights to the farms sold at public auction to defendant's subsidiary; that plaintiff José Antonio was

not a party to that deed (T. 33), because he was then under legal age; that no acts have been performed by him directed to the ratification of the deed of August 26, 1927 (T. 33), and that no previous authorization for, or subsequent approval of, this deed (T. 33), has been obtained from the District Court of Arecibo.

The District Court held, as conclusions of law, that the clerk of the court had no power to enter judgment by default (T. 36) upon the summons issued against the widow and heirs of González Cabeza, in the action filed by Central Cambalache, Inc., and that he had exceeded his jurisdiction in entering judgment and in issuing execution for the amount claimed, plus interest at the stipulated rate of nine per cent yearly (T. 36), and that the execution sale of the litigated farms was null and void *ab initio;* that the transfer of the farms to the *sociedad* was an absolute nullity; that the widow and heirs of González Cabeza who were of age when they signed the deed of August 26, 1927, had fully ratified and validated the judicial proceedings under which their farms had been adjudicated to Oliver, Matienzo & Cía., S. en C. (T. 36-37), and plaintiff José Antonio González Campos had not performed acts of ratification when he arrived at legal age (T. 37), to create an estoppel against him; that Central Cambalache, Inc., could legally make the loans to González Cabeza (T. 34), and that it could acquire, own and control land in excess of five hundred acres (T. 34-35), subject only to be questioned by the State.

The District Court did not pass upon the averment of defendant corporation relative to the ratification of the judgment in default because of the appearance of an attorney in behalf of the defendants therein.

The District Court relied upon the decision of the Supreme Court of Puerto Rico in *Martínez* v. *Figueroa,* 50 P. R. 908 (1937), and cases cited therein, the leading Puerto Rican authority on which petitioners rely.

The Judgment

Upon these findings and conclusions, the District Court ordered defendant Corporation to restore to plaintiff José Antonio González Campos the possession and enjoyment of a share of one-eighth of each and every one of the litigated farms; to pay to him $2,858.50, as his participation in the amount produced by the movables, cattle and crops sold under deed of August 26, 1927; to pay to him the sum of $8,250, as his share in the mesne profits of the farms, with interest on both amounts at the rate of six per cent per annum, and to pay the costs and attorney's fees for plaintiff's attorneys in the amount of two thousand dollars.

The Appeals

On the 11th and 23rd of March, 1943, respectively, plaintiffs Elisa Campos Delgado, Fernando González Campos and Angelita González Campos (T. 40-41), and defendant Central Cambalache, Inc. (T. 41-42), appealed from the judgment entered against them by the District Court, and their appeals were heard and decided by the Supreme Court of Puerto Rico on January 20 and June 28, 1944, respectively. The judgment of the District Court for Central Cambalache, Inc., and against plaintiffs Elisa Campos, Fernando González Campos and Angelita González Campos was affirmed, and judgment for plaintiff José Antonio González Campos and against Central Cambalache, Inc., was reversed (T. 272-291).

The Supreme Court found against plaintiffs the issues of law decided against them by the District Court and, besides, held: That the judgment entered by default by the clerk in the action interposed by defendant corporation against the widow and heirs of González Cabeza, under which their farms were sold (T. 283-290), was good and valid under the law and the judicial decisions of the Territory: that the

execution of that judgment was valid, even though executed for the amount claimed, plus interest at a rate not stipulated, and higher than the legal rate; that the sale of the farms to Oliver, Matienzo & Cía., S. en C., was good, in spite of the fact that the marshal had subjected to public auction the realty, and en masse, with preference to defendant's personal property (T. 289-290), because the appearance of petitioners therein through an attorney had cured these "irregularities"; and, although nothing was decided as to the admissibility and effect of the deed of August 26, 1927, the Supreme Court held that, insofar as the sale of the cattle, crops and movables was concerned, minor José Antonio González Campos, upon becoming of age (T. 290-291), had performed acts amounting to ratification of the deed.

All the cases consolidated for hearing, before the Supreme Court of Puerto Rico, and the Circuit Court of Appeals, were directed to recover possession of various farms under the control and ownership of Central Cambalache, Inc.

In the cases of Elisa Campos Delgado *et al.* (S. C. No. 8815) and of Sucn. Basilio Siberio González (S. C. No. 8776), Juan González Campos and José Matienzo, respectively, were nominal defendants. The cases of Siberio González, López Morales and Abreu Colón, were decided by the District Court upon demurrers.

All four cases have one common ground of action; the violation of the so called "500 Acre Law", as contained in the Organic Act of Puerto Rico, and the articles of incorporation of Central Cambalache, Inc.

The *Campos Delgado* case has one additional ground of recovery, not common to any of the other cases; the invalidity of certain judicial proceeding under which petitioners' litigated farms were sold at public auction.

Specification of Errors

The Circuit Court of Appeals erred in deciding that:

1. There is no question of Federal Law involved in the appeals of these cases;

2. The Supreme Court of Puerto Rico in these cases decided questions of purely local law, when it interpreted the Insular Statute (Act No. 33 of July 22, 1935, Laws of Puerto Rico, Special Session, 1935, P. 418) implementing Sec. 39 of the Organic Act, and that;

3. In consequence the title of a corporation to lands held by it in violation of said Sec. 39 is valid against every one, except against the People of Puerto Rico, and,

4.It does not see any clear or manifest error in the interpretation of the said Act No. 33 of July 22 of 1935, by the Supreme Court, or in its answers to any of the other questions of local law.

Reasons for Granting the Petition, and Authorities in Support Thereof

The facts and questions of law involved in the appeals of the judgments of the Supreme Court of Puerto Rico, under the consideration of the Circuit Court, reasonably place these causes without the operation of the injunction contained in the case of *Bonet* v. *Texas Co.*, 308 U. S. 464.

I

In so far as the *Campos Delgado* case (S. C. No. 8815) the Insular Supreme Court clearly erred in the interpretation and application of Sections 94(1) and 89(3) of the Code of Civil Procedure of Puerto Rico, which provides: firstly that in actions for the recovery of money the summons *must* contain *a notice* that unless the defendant appears and an-

swers, the plaintiff will take judgment for the sum demanded in the complaint (*stating it*), and, secondly, that in cases arising from contracts *for the payment of money only,* if defendant does not appear and answer, within the time specified in the summons, the clerk of the Court shall note the default, and enter in the record a judgment for the payment of the amount *stated in the summons.*

In the summons issued by the clerk of the District Court of Arecibo, and served on the defendants in the actions interposed by Central Cambalache, Inc., to collect the debts for which the litigated farms were sold at public auction, no amount was *stated* for which judgment could be entered in case of a default, and the clerk could not go beyond the mere act of noting the default of defendants, whereupon the Court, and only the court, thru its judge, could render the judgment. The holding that the judgment directly attacked in the *Campos Delgado* case is merely irregular openly and legally stands against the decisions of the Supreme Court in *Zapater* v. *Irizarry et al.,* 15 P. R. R. 526 (1909); *Vias* v. *Estate of Pérez,* 15 P. R. R. 715 (1909); *Freiría & Co., Ltd.,* v. *R. Félix Hermanos & Co.,* 20 P. R. R. 148 (1914); *Ramos* v. *Selles Casas & Co., et al.,* 37 P. R. R. 563 (1928), and *Congress Cigar Co., Inc.,* v. *Grau,* 44 P. R. R. 626 (1933), which traditionally have upheld the strict letter of Sections 89 and 94 of the Code of Civil Procedure.

Thus the judgment of the Supreme Court of Puerto Rico appealed from is *manifestly in conflict* with those decisions, and more specifically with the principles laid in *Martínez* v. *Figueroa,* 50 P. R. R. 908.

II

Again, in the *Campos Delgado* case the Supreme Court of Puerto Rico clearly ignored the mandatory provisions contained in paragraph 1 of Section 240 of the Code of Civil

Procedure, to the effect that in order to satisfy money judgments the personal property of the debtor must be firstly subjected to the payment of the judgment, and should this not be sufficient, then his realty may be reached. The evidence shows without one jot of contradiction (T. R. 81-86), that the Marshal of the District Court of Arecibo proceeded inmediately against the realty of petitioners, in spite of the order of the Court to the contrary, and the fact that they were then owners of substantial personal property (T. R. 190-191).

Section 253 of the procedural code commands the Marshal to *separately sell* known parcels or lots of real estate, unless the defendant, if present, determines the order in which the parcels must be sold. The record fully shows (T. R. 83 and 203) that the property of petitioners sold in satisfaction of the judgment was composed of thirteen well known separate parcels. None of petitioners were present at the judicial sale, to waive the mandate of the law. They were never before the court or any of its officials. They were in default.

The construction and application, by the Supreme Court of Puerto Rico, of the provisions of the law relative to the execution of money judgments, and the sale of debtors property in satisfaction thereof, are wholly contradictory to the principles embodied in its decisions of *Hernández Mena* v. *Foote,* 22 P. R. R. 705 (1915); *Sola* v. *Castro,* 32 P. R. R. 740 (1924); *Lloveras, et al.* v. *Landron, et al.,* 37 P. R. R. 335 (1927) and *Rodríguez, et al.,* v. *Alonso, et al.,* 37 P. R. R. 322, and obviously in conflict with decisions of Federal Courts such as *Cumberland Lumber Co.* v. *Tunis Lumber Co.,* 171 F. 352 (1904) and *In re Haywood Wagon Co.,* 219 F. 655 (1914).

III

The reversal of the judgment of the District Court of Arecibo, in favor of José Antonio Gonzáles Campos, and the affirmance by the Circuit Court of Appeals of the action of the Supreme Court of the Island, are openly and manifestly in conflict with the decision of this Honorable Supreme Court in *Longpre* v. *Díaz,* 237 U. S. 512 (1915), and an improvident abrogation of Sections 159 and 160 of the Civil Code of Puerto Rico (1930 edition), as interpreted and applied by the Supreme Court of the Island in *F. Zayas, S. en C.,* v. *Torres,* 51 P. R. R. 772 (1932); *Traviesco* v. *McCormick,* 54 P. R. R. 312 (1939); and *Meléndez* vs. *Registrar,* 58 P. R. R. 328 (1941).

IV

Sua sponte, the Supreme Court of Puerto Rico raised the bars of limitations against the action of petitioners in avoidance of the judicial proceeding under which their farms were sold to Central Cambalache, Inc.

The error is most patent.

The complaint was filed well within any of the periods of prescription possibly applicable: 30 and 15 years under Sections 1863 and 1864, respectively, of the Civil Code of Puerto Rico (1930 edition). Moreover, under the provisions of Section 128 of the Code of Civil Procedure, prescription must be alleged specifically, and respondent did not do so.

In this point the holdings in *Oliver et al.* v. *Oliver,* 20 P. R. R. 168 (1915); *Rodríguez et al.* v. *Alonso et al., supra; González et al.* v. *Fumero et al.,* 38 P. R. R. 497 (1928); and *United States* v. *Bebee,* 180 U. S. 343 (1901), are directly in conflict with the decision of the Supreme Court of Puerto Rico, which we are now praying to review.

V

The Insular Supreme Court did not pass upon the admissibility of the deed of judicial sale, executed by the Marshal of the District Court of Arecibo, September 2, 1926 (T. R. 168), and the deed of ratification of August 26, 1927 (T. R. 183), which are supposed to have lodged the title to the lands involved in the litigation in Central Cambalache, Inc., even though petitioners argued before the local courts that their admissions in evidence were contrary to the principles established by this Honorable Supreme Court in *Central Transportation Company* v. *Pullman's Palace Car Company* (1881), 193 U. S. 24, and the Circuit Court of Appeals ignored this question, which was fully presented to its consideration (T. R. 407-408) under the tenth assignment of the Statement of Points.

Both deeds are instruments whereby Central Cambalache, Inc., an agricultural corporation of Puerto Rico, attempts to acquire, thru one of its agencies and or subsidiary, over 500 acres of land, in violation of the limitations contained in Joint Resolution No. 23, of the Congress of the United States, approved May 1, 1900, Sec. 4 of the General Corporation Law of Puerto Rico, and the fourth of its own articles of incorporation.

In addition to the objections already presented, petitioners also questioned the admissibility of the *so-called deed of ratification* (T. R. 183-186) because: (1) it aims to ratify the void judicial proceedings (*Roman* v. *Cortés*, 59 P. R. R. 483); (2) it is a violation of Secs. 159 and 160 of the Civil Code of Puerto Rico (*Longpre* v. *Díaz, supra;* (3) it does not mention the defects that were to be cured (*Central Boca Chica* v. *Treasurer*, 54 P. R. R. 404), and it does not recite, and there was not, a consideration to support the ratification (*Henderson* v. *Skimmer*, 59 L. R. A. 174; *Civil Code*, Section 1213, edition 1930, and 8 *Manresa Commentaries to the Civil Code*, P. 804).

VI

Petitioners contend that Central Cambalache, Inc., under the text of its fourth article of incorporation (T. R. 52) has no power to lend money, and that such a power cannot be claimed because of the terms of Sec. 3 of Joint Resolution No. 23, of the Federal Congress of May 1, 1900. The Supreme Court of Puerto Rico held that agricultural corporations are expressly authorized by said Resolution No. 23 to grant loans of their money.

We respectfully argue that this holding is clearly in contradiction with the language of the statute and against the decisions in: *Oregonian Railway Co.* v. *Oregonian Ry. Co.*, 130 U. S. 1 (1889); *California Bank* v. *Kennedy*, 167 U. S. 362 (1897); *De la Vergne Co.* v. *German Savings Inst.*, 175 U. S. 40 (189); *National Home Building Ass'n* v. *Bank*, 181 Ill. 35 (1899); *Hanchey* v. *Southern Home Building & Loan Ass'n*, 37 So. 272 (Ala. 1904); *Calumet, etc. Dock Co.* v. *Conkling*, 273 Ill. 318 (1916); *In re Garden City Parlor Furniture Co.*, 268 F. 318 (1920); *Kappers* v. *Cast Stone Const. Co.*, 200 N. W. 376 (Wis. 1924); 7 Am. Jur. 27.

Besides, it was decided by the District Court of Arecibo, and the Insular Supreme Court, that the loans made by Central Cambalache, Inc., to Fernando González Cabeza were crop loans. We respectfully assure this Honorable Supreme Court that there is not one speck of evidence in the record to establish such a conclusion, and, on the contrary, there is overwhelming proof (T. R. pp. 34, 67, 108, 109, 123, 143, and 151) showing that said loans were foreign to the purposes for which the corporation was created.

VII

However, supposing that, under the law and its articles of incorporation, respondent could make the loans, it could not take, in satisfaction thereof, more land than that which

was given as security for the loans. (*National Home Building Ass'n* v. *Bank, supra,* and *William* v. *Merchants' National Bank of St. Cloud,* 42 F. (2d) 243 (1930).)

The papers of this case show (T. R. pp. 83, 90, 95, 103, 104, and 203) that respondent took under the execution sale, more land than had been given to it as security for its loans.

VIII

The finding of the Supreme Court of Puerto Rico that petitioner José Antonio González Campos had ratified the deed of August 26, 1927, thus reversing the District Court of Arecibo, which found in his favor (T. R. 37), is wholly unfounded, not supported by the evidence, and violently destructive of the best judicial precedents and doctrines. The deed is an absolute nullity, and illegal. No acts of the parties to an illegal contract can validate or give life to it. José Antonio was not a party to that deed. Transactions which are void cannot be validated or ratified. Civil Code, Secs. 4, 1213, 1214, and 1215; *Longpre* v. *Díaz, supra; F. Zayas, S. en C.,* v. *Torres, supra; Meléndez* v. *Registrar, supra; Román* v. *Municipal Court, supra; Tate* v. *Gaines,* 105 P. 193; *6 R. C. L.* 701-702, sec. 107; 20 *Scaevola, Commentaries to the Civil Code,* p. 577; 8 *Manresa, op. cit.,* p. 807.

IX

It is our contention that Central Cambalache, Inc., a corporation organized for agricultural purposes, has no title nor any right to retain the litigated farms, because when it attempted to acquire them, either on September 2, 1926, or August 26, 1927, when apparently they were transferred to Oliver, Matienzo & Cía., S. en C., or on January 11, 1932, when the *sociedad* pretends to have transferred them in payment of debts to defendant, the corporation had already under its control and ownership more than five hundred

acres of land, and, therefore, it had no legal capacity to acquire more.

The holdings of the District Court of Arecibo, and of the Supreme Court of Puerto Rico, contrary to our conception of the law in this particular, are manifestly erroneous and openly in conflict with innumerous decisions of this Supreme Court, and authorities of long standing.

Petitioners alleged (T. R. 1 and 15) that when their farms came under the control of Central Cambalache, Inc., this corporation had already acquired, and was in possession of more than five hundred acres of land. This was one of the conclusions of facts of the District Court (T. 33).

Then, there was no contract of purchase, because it was against the law and the public policy of Puerto Rico, as established by the Congress of the United States, for defendant corporation to acquire more than five hundred acres of land; the corporation had no power to contract over that subject matter; there was no valid consent in the transfer, and the contract was based upon an illegal consideration. The Civil Code, Section 4, provides that any act executed against the provisions of the law is null and void, unless the law itself provides for its validity. Section 3 of Joint Resolution No. 23 provides that no agricultural corporation in Puerto Rico shall own or control more than five hundred acres of land, and there is no provision in any Federal Law, or in any other enactment of Puerto Rico, providing for the validity of transfers of land, in excess of five hundred acres, to agricultural corporations; 6 *R. C. L.* 700-702; *People* v. *Fajardo Sugar Co.*, 51 P. R. R. 851; *People* v. *Rubert Hermanos, Inc.*, 53 P. R. R. 741 (1938); *Stevens* v. *Boyes Hot Springs Co.*, 298 p. 508.

Sections 1206 and 1207 of the same code prescribe that there is a contract from the moment one or more persons consent to bind themselves to do something with regard to

another, and that the contracting parties may agree to anything *not contrary to the law,* moral or public peace. Central Cambalache, Inc., agreed to receive for its money parcels of land in excess of five hundred acres, which it could not take under the Organic Act, nor under its articles of incorporation.

Again, Section 1213 provides that there is no contract unless there is the consent of the contracting parties, a definite object and a consideration for the contract. All three requisites must be present, and petitioners contend that in the transaction, through which respondent acquired the litigated farms, there was no consent, because the corporation could not consent, under the provisions of articles 1214 and 1216 of the Civil Code. Immediately respondent brought under its control and ownership five hundred acres of land, it could not consent to accept any more. *Catholic Congregation* v. *Germain,* 104 Ill. 440 (1882); *8 Manresa, op. cit.,* p. 638.

The object of a legal contract, Section 1223 of the Civil Code prescribes, must be something not outside of the commerce of man, and it is obvious that any amount of land in excess of five hundred acres is outside of commerce for an agricultural corporation in Puerto Rico, even though land in any amount is in the field of commerce for any natural person. *8 Manresa, op. cit.,* pp. 670-671. And section 1227 provides that considerations contrary to the law do not give rise to a legal contract. For Central Cambalache, Inc., the consideration was the litigated farms, and even though any other individual could part with his money to acquire these farms, this corporation could not, because it is expressly forbidden by the law of the land and its articles of incorporation. *De la Vergne Co.* v. *German Savings Inst., supra; Carroll* v. *City of East St. Louis,* 67 Ill. 568 (1873); *Catholic Congregation* v. *Germain, supra.*

Petitioners most forcefully rely *upon Central Transp. Co.* v. *Pullman's Car Co., supra,* to establish that a contract entered into by a corporation in violation of the public law, or the provisions of its charter, is illegal and null and void.

This case has been followed by the Supreme Court of the various States and the Federal Supreme Court in numerous cases.

McCormick v. *Market Bank,* 165 U. S. 538 (1897); *Cornell University* v. *Fiske,* 111 N. Y. 66 (1888), affirmed 136 U. S. 152 (1889); *Wood* v. *Hammond,* 17 A. 324 (R. I. 1889); *South & N. A. R. Co.* v. *Highland Ave. and B. R. Co.,* 24 So. 115 (Ala. 1898); *Proctor* v. *Board of Trustees of M. E. Church,* 123 S. W. 862 (Mo. 1909); *Levison* v. *Boas,* 12 L. R. A. (N. S.) 575 (Cal. 1907); *Hanna* v. *Kelsey Realty Co.,* 129 N. W. 1080 (Wis. 1911); *Kennet* v. *Kidd,* 125 P. 36 (Kan. 1912); *Compton* v. *Moore,* 156 Ky. 544 (1913); *Heiligenstein* v. *Schlotterback,* 133 N. E. 188 (1921); *In re Hool Realty Co.,* 2 F. (2d) 334 (1924), cert. denied, 266 U. S. 635 (1925); *Perkins Mfg. Co.* v. *Clinton Const. Co.,* 295 P. 1 (Cal. 1930).

X

Both Insular Courts, upon the authority of the cases of *Cía. Azucarera de Carolina* v. *Reg. Prop.,* 19 P. R. R. 143 (1913), and those following up to *Baetjer* v. *Registrar,* 48 P. R. R. 627 (1935), held that "The prohibition which limits the acquisition of lands by agricultural corporations did not aim to protect the individual or private interests" (T. 35), and that (T. 280) the title of corporations to real property in violation of the Organic Act of Puerto Rico can only be attacked by the People. In this connection petitioners wish to make it clear that they are not questioning the right of the corporation to exist, nor claiming that it should be dissolved, on account of its violation of the law and its charter. This action, we know, belongs exclusively

to the State. But we claim they do have the right to attack the title of the corporation to the litigated lands.

They were either involuntary or innocent parties to the contracts. *Proctor* v. *Board of Trustees of M. E. Church, supra; Meyer* v. *Meyer*, 79 F. (2d) 55 (1935); *Cornell University* v. *Fiske, supra; Wood* v. *Hammond, supra.*

The parties to an illegal or void contract are not estopped from claiming such illegality, even though the benefits derived from the contract are not returned. *Texas & Pacific Ry.* v. *Pottorff*, 291 U. S. 245 (1934).

XI

The Supreme Court of Puerto Rico refers to the fact (T. 283) that the Legislature of Puerto Rico on August 7, 1935, approved Act Number 47 (Special Session, P. 530), amending sections 2 and 6 of the Law Establishing the Proceedings in the Nature of Quo Warranto, approved March 1, 1903, and emphasizes the fact that the Legislature of Puerto Rico provides for compensation to corporations dispossessed of their lands through quo-warranto proceedings. This can not defeat the right of petitioners to recover. When the State exercises the power of eminent domain, it should always pay for the property taken, regardless of the manner how individuals have come into its possession. However, when individuals bring their matter or contention to the courts, they must follow the rules and precedents in order to have their rights adjudicated.

It may be inferred that because the Legislature authorized the payment of compensation for the lands, in proceedings under the provisions of Act No. 47 of 1935, there has been a validation of the acts and proceedings in the acquisition of these lands by respondent corporation. No action of the Legislature of Puerto Rico could ever validate the judicial proceedings and execution sale under which

the corporation became the owner of the litigated farms, nor could ever the Legislature of Puerto Rico pass a valid act giving life to contracts entered into in violation of a Federal Statute. 30 *Am. Jur.* 898, *Judgments, Interference by Legislature; Levison* v. *Boas, supra;* and cases cited in the note; *Perkins Mfrs. Co.* v. *Clinton Const. Co., supra; Fitzsimons* v. *Eagle Brewing,* pp. 685-687; *City of Paris* v. *Kentucky Utilities Co.,* 133 S. W. (2d) 559 (Ky. 1939).

Conclusion

We submit, therefore, that the petition for certiorari should be granted, because the questions involved in these cases, as decided by the Supreme Court of Puerto Rico, and affirmed by the Circuit Court of the United States, First Circuit, are in conflict with decisions of this Honorable Supreme Court, and they are so conflicting with previous decisions of the Supreme Court of Puerto Rico, that the principles of the *Bonet* v. *Texas Co.* case, 308 U. S. 463, are not controlling in these causes.

This court should grant the petition in order to reverse the Circuit Court of Appeals and to cure the unjust results of its affirmance of the decision of the Supreme Court of Puerto Rico.

Respectfully submitted,

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Of Counsel:
A. REYES DELGADO,
LUIS MERCADER,
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APPENDIX

Section 89 of the Code of Civil Procedure of Puerto Rico, (1933 edition). The summons must be directed to the defendant, signed by the secretary, and issued under the seal of the court and must contain:

* * * * * * *

3. A direction that the defendant appear and answer the complaint within ten days, if the summons is served within the district in which the action is brought; within twenty days if served out of the district, but in the Island of Porto Rico, and within forty days if served elsewhere.

4. In an action arising on contract, for the recovery of money, or damages only, a notice that unless the defendant so appears and answers, the plaintiff will take judgment for the sum demanded in the complaint (stating it).

5. In other actions, a notice that unless defendant so appears and answers, the plaintiff will apply to the court for the relief demanded in the complaint. The name of the plaintiff's attorney must be endorsed on the summons.

Section 194 of the Code of Civil Procedure of Puerto Rico, (1933 edition). Judgment may be had, if the defendant fail to answer the complaint, as follows:

1. In an action arising upon contract for the recovery of money or damages only, if no answer has been filed with the secretary of the court within the time specified in the summons, or such further time as may have been granted, the secretary, upon application of the plaintiff, must enter the default of the defendant, and immediately thereafter enter judgment for the amount specified in the summons including the costs, against the defendant, or against one or more of several defendants, in the cases provided for in section 96.

2. In other actions, if no answer has been filed with the secretary of the court within the time specified in the summons, or such further time as may have been granted,

the secretary must enter the default of the defendant; and thereafter the plaintiff may apply at the first or any subsequent term of the court for the relief demanded in the complaint. If the taking of an account, or the proof of any fact, is necessary to enable the court to give judgment, or to carry the judgment into effect, the court may take the account or hear the proof; or may, in its discretion, order a reference for that purpose; or if, to determine the amount of damages, the examination of a long account be involved, by a reference as above provided.

Section 240 of the Code of Civil Procedure of Puerto Rico, (1933 edition). The writ of execution must be issued in the name of "The United States of America, the President of the United States, The People of Porto Rico, SS," sealed with the seal of the court, and subscribed by the secretary, and be directed to the marshall, and it must intelligently refer to the judgment, stating the court, the district where the judgment roll is filed, and if it be for money, the amount thereof, and the amount actually due thereon, and if made payable in a specified kind of money, or currency, as provided in section 230, the execution must also state the kind of money or currency in which the judgment is payable, and must require the marshall substancially as follows:

1. If it be against the property of the judgment debtor, it shall require the marshall to satisfy the judgment, with interest, out of the personal property of such debtor, and if sufficient personal property cannot be found, then out of his real property; or if the judgment be a lien upon real property, then out of the real property belonging to him on the day when the judgment was docketed, or at any time thereafter; or, if the execution be issued to a district other than one in which the judgment was recovered, on the day when the transcript of the docket was filed in the office of the registrar of such district, stating such day or any time thereafter.

Section 253 of the Code of Civil Procedure of Puerto Rico, (1933 edition). All sales of property under execution must be made at auction to the highest bidder, between the hours

of nine in the morning and five in the afternoon. After sufficient property has been sold to satisfy the execution, no more can be sold. Neither the officer holding the execution nor his deputy can become a purchaser, or be interested in any purchase, at such sale. When the sale is of personal property, capable of manuel delivery, it must be within views of those who attend the sale, and be sold in such parcels as are likely to bring the highest price; and when the sale is of real property, consisting of several known lots or parcels, they must be sold separately; or, when a portion of such real property is claimed by a third person, and he requires it to be sold separately, such portion must be thus sold. The judgment debtor, if present at the sale, may also direct the order in which property, real or personal, shall be sold, when such property consists of several known lots or parcels, or of articles which can be sold to advantage separately, and the marshall must follow such directions.

Section 4 of the Civil Code of Puerto Rico, (1930 edition) —Acts executed contrary to the provisions of law are void except when the law preserves their validity.

Rights granted by the laws may be renounced, provided such renunciation be not contrary to law, to public interest or public order, or prejudicial to the interest of a third person.

* * * * * * *

Section 159 of the Civil Code of Puerto Rico, (1930 edition)—The exercise of the patria *potestas* does not authorize the father or the mother to alienate or lay any encumbrance upon real property of any class whatever, or upon personal property, the value of which exceeds five hundred dollars, pertaining to the child and which may be under the administration of its parents, without the previous authorization of the district court wherein the property is situated and the demonstration of the necessity and utility of the alienation or encumbrance and in accordance with the provisions of the law relative to special legal proceedings.

Notwithstanding the prescriptions of the preceding paragraph, no judicial authorization shall be required for the sale of fruits yielded by an agricultural property at its last crop.

For the execution of contracts for the lease of real property, including those of advances for agricultural purposes and grinding of cane authorized by the act of March 10, 1910, covering a longer period than six years, the authorization provided for in the preceding paragraph shall also be required; but in no case shall the contract be entered into nor the authorization granted for a lease covering a period of time in excess to that required by the child, not otherwise incapacitated, to become of age.

* * * * * * *

Section 160 of the Civil Code of Puerto Rico, (1930 edition). Whenever, in any matter, the father or mother have interests opposed to those of their unemancipated children, the district court shall appoint for the latter a person to defend their interests, who shall represent them in or out of court.

The district court, on petition of the father or mother, the minor himself, the public attorney or any other person capable of appearing in a suit, shall appoint, as the person to defend the interests of the said unemancipated child, the relative who, in a proper case, would act as his tutor by effect of the law, and, in his default, to another relative or any other person.

* * * * * * *

Section 3 of the Joint Resolution of May 1, 1900. No corporation shall be authorized to conduct the business of buying and selling real estate or be permitted to hold or own real estate, except such as may be reasonably necessary to enable it to carry out the purposes for which it was created, and every corporation hereafter authorized to engage in agriculture shall by its charter be restricted to the ownership and control of not to exceed five hundred acres of land; and this provision shall be held to prevent any member of a corporation engaged in agriculture from being

in any wise interested in any other corporation engaged in agriculture. Corporations, however, may loan funds upon real estate security, and purchase real estate when necessary for the collection of loans, but they shall dispose of real estate so obtained within five years after receiving the title. Corporations not organized in Porto Rico, and doing business therein, shall be bound by the provisions of this section so far as they are applicable.

* * * * * * *

Paragraphs 4 and 8 of Section 3, Section 4 and paragraphs 4 and 7 of Section 7, of the General Corporation Law of Porto Rico. (Laws of 1911, p. 87.)

Section 3. Every corporation has power:

* * * * * * *

4. To acquire and to hold in any legal manner and to transfer such property, both real and personal, as the purposes expressed in the articles of incorporation may require, and to mortgage such property with its franchise; *provided,* however, that the power of any agricultural corporation, organized under this act, to hold real estate shall be subject to the prohibition contained in Section 3, of the Joint Resolution of the Congress of the United States of May 1, 1900.

* * * * * * *

8. To possess and exercise, subject to the restrictions and liabilities contained in this Act, and in the Civil Code and its articles of incorporation, such incidental powers as are necessary or convenient to the attainment of the object or objects set forth in such articles of incorporation; *provided,* that the same are not inappropriate to, or inconsistent with, such articles of incorporation or with the provisions of this Act and of the Civil Code.

Section 4. No corporation formed under this Act shall be deemed to possess or shall exercise corporate powers except in accordance with the provisions of the preceding section. Neither shall any such corporation transact any

banking business in conflict with, or opposition to, the prescription of the Statutes of the United States concerning banks.

Section 7. The articles of incorporation must be subscribed by each of the incorporators and must be acknowledged before a notary or other officer authorized to take and certify acknowledgments. They shall set forth:

* * * * * * *

4. The object or objects for which the corporation is formed.

* * * * * * *

7. Any provision which the incorporators may choose to insert for the regulation of the business and the conduct of the affairs of the corporation, or for creating, defining, limiting and regulating the powers of the corporation, directors or of the stockholders, provided that such provisions or provision shall be consistent with this Act."

* * * * * * *

Sections 2 and 6 of Act of March 1, 1902, as amended by Act No. 47 of August 7, 1935 (*Special Session*, p. 530).

Section 2. * * * or whenever any corporation, by itself or through any other subsidiary or affiliated entity or agent, exercises rights, performs acts, or makes contracts in violation of the express provisions of the Organic Act of Puerto Rico, or of any of its statutes, the Attorney General or any district attorney, either on his own initiative or at the instance of another person, may file before the Supreme Court of Puerto Rico a petition for an information in the nature of *quo warranto* in the name of the People of Puerto Rico; * * *

"When any corporation by itself or through any other subsidiary or affiliated entity or agent is unlawfully holding, under any title, real estate in Puerto Rico, The People of Puerto Rico may, at its option, through the same proceedings, institute in its behalf the confiscation of such property, or the alienation thereof at public

auction, within a term of not more than six months, counting from the date on which final sentence is rendered.

"In every case, alienation or confiscation shall be (through) the corresponding indemnity as established in the law of eminent domain.

Section 6. Whenever, in the opinion of the court, it is satisfactorily established that the corporation or corporations have performed acts or exercised rights not conferred by law, or in violation of the express provisions thereof, the judgment entered shall, in case the defendant is a domestic corporation, decree the dissolution thereof and the prohibition to continue doing business in the country; and in the case of a foreign corporation, the nullity of all acts done and contracts made by the defendant corporation or entity; and in addition, said judgment shall decree the cancellation of every entry or registration made by the said corporation in the public registries of Puerto Rico; and when the decree of nullity affects real property and the People of Puerto Rico has chosen to confiscate it or orders it sold at public auction, the final judgment shall fix the reasonable price to be paid for said property. For these purposes, the just value of the property subject to alienation or confiscation shall be filed in the same manner as it is fixed in cases of condemnation proceedings. The violation of an order prohibiting the doing of business, after final judgment is rendered, shall be punished by a maximum fine of five hundred dollars ($500) for each day such entity may continue in operation, enforceable on the property of the entity, and the persons representing it shall be guilty of contempt of court, punishable by imprisonment for a minimum term of from one to six months in jail.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1946

No. 735

ELISA CAMPOS DELGADO, *et al.*,
Petitioners,

vs.

CENTRAL CAMBALACHE, *et al.*,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

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JOSÉ G. GONZÁLEZ,
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INDEX

	PAGE
OPINION BELOW	1
STATEMENT OF THE CASE	1
ARGUMENT:	
I The Questions Presented	5
II Central Cambalache, Inc., had the power to loan the money secured by mortgage and to collect the debt	6
III The alleged defects in the proceedings to collect the original loan	8
A. The Summons	8
B. The entry of judgment	8
C. The execution of the judgment	9
IV The deed of ratification	10
CONCLUSION	11

TABLE OF CASES

Bonet v. *Yabucoa Sugar Co.*, 306 U. S. 505	5
Muñoz v. *Nieves*, 53 PRR 331	9
Puerto Rico v. *Rubert Hermanos, Inc.*, 309 U. S. 543	5, 7
Union Mutual Bank of St. Louis v. *Mathews*, 98 U. S. 621. Note 125 ALR 1523	7
7 *Fletcher Cyclopedia Corporations* (Permanent Edition) § 3487, p. 643	7

Statutes

Civil Code: PAGE

Section 608, 1930 Ed. 2
Section 89 8
Article 194 8
Section 1263 11

Joint Resolution of Congress of May 1, 1900:

Five Hundred Acre Law.....4, 5, 6, 7, 8, 12
Section 3 5

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Opinion Below

The opinion of the Circuit Court of Appeals (R. 412-414) is correctly cited in the petition.

Statement of the Case

The facts and issues involved are fully and clearly stated in the opinion of the Supreme Court delivered by Mr. Justice de Jesús (R. 272 ff). Briefly stated they are as follows:

In the year 1920 Fernando González Cabeza borrowed the sum of $39,000 from Central Cambalache, Inc., secured by mortgages on the cane lands which Petitioners are seek-

ing to recover in this case. Petitioners presented testimony at the trial to show (Fernando González Campos R. 143 ff, Juan González Campos R. 51 ff) that the money so borrowed was used to purchase the land.

Up to December 18, 1925 nothing had been paid on the principal of the loan and only $628.99 had been paid on account of interest. Principal and interest then amounted to $56,574.07. Central Cambalache, Inc. on that date filed an ordinary action (not an ex-parte foreclosure proceeding) for collection of debt against the widow and children who, as universal heirs, had succeeded to the obligations as well as the assets of the deceased (R. 67) (Civil Code Sec. 608, 1930 Ed.). The summons and complaint were served on the defendants-petitioners by the Marshal who made his return (R. 89). None of the defendants-petitioners appeared or pleaded to the complaint whereupon judgment by default was entered by the Clerk at the request of the plaintiff, Central Cambalache, Inc., (R. 74). The judgment was notified to the parties by the Marshal (R. 76-77). Some three months later, after time for appeal had expired, plaintiff moved for a writ of execution (R. 77) which was issued by the District Judge (R. 78-79). The Marshall was directed to execute the judgment "on personal property belonging to said debtor and should the personal property be insufficient then the real property," etc. (R. 79-80). The return of the Marshal states that he carried out the order of execution by attaching the properties designated by the plaintiff (R. 81) which were in substance the properties mortgaged to secure the original loan.

The properties attached were sold at public auction on August 26, 1926 after the publication of edicts, etc. (R. 87 ff). Attorney Antonio Lens Cuena appeared at the sale in the name and in representation of the defendants and asked that the properties advertised for sale be sold in one block "inasmuch as the defendants were aware that that was the best way to obtain a more profitable bid" (R. 92). The properties were bid in by Oliver Matienzo & Co.,

S. en C., who acted on behalf of Central Cambalache, Inc., the real party in interest, for $56,574.07.

The heirs of Fernando González Cabeza remained in possession of the properties and continued to farm them until August 26, 1927. On that date they entered into an agreement with Oliver Matienzo & Co., S. en C. (R. 187) in which the widow, Elisa Campos, stated that she represented the one minor child, José Antonio, as guardian. By virtue of the said agreement they were paid the total sum of $28,675 for the growing cane crops and equipment, less $9,675.78 which they owed to Central Cambalache on account of crop loans. The contract provided in part as follows:

> "It is expressly agreed that Mrs. Elisa Campos and her children voluntarily waive and convey any other rights which they might have on the properties belonging to Oliver, Matienzo & Company, acquired by purchase at public auction and specially the right of homestead which they may have thereon, which waiver is made in favor of Oliver, Matienzo & Company, in consideration also of the amount received by the first, according to the act approved on March twelve, nineteen hundred and three."

Of the amount received under this agreement the part pertaining to the minor José Antonio, $2,072.50, was deposited in accordance with the terms of the contract with the American Colonial Bank (R. 238) in the names of the mother with *patria potestas* over the minor, and the District Attorney, pending approval of the contract by the Court (R. 191) for the minor. The agreement was never expressly approved by the Court but the approval of the Court was expressly obtained for the investment of the amount so deposited (R. 242), and for the reinvestment of the proceeds of the first investment (R. 247). Finally, a piece of property was purchased with part of the funds pursuant to the approval of the Court (R. 253). Upon becoming of age, José Antonio mortgaged this property to secure a loan for $500.00 (R. 290) which the Supreme Court held constituted a ratification of the transaction (R. 290).

After approximately fifteen years had elapsed the heirs, with the exception of Juan, who refused to join in the proceeding, brought the suit which is the subject of this Petition to annul the proceedings by which Oliver, Matienzo & Co., S. en C., obtained title on the execution sale and for profits of the farm from 1927 (R. 2-16).

The complaint states three grounds for the relief requested (R. 15):

> (a) That Central Cambalache, Inc. had no legal capacity to acquire the lands.
>
> (b) That the judgment ordering the execution sale was void because the summons in the action brought by Central Cambalache, Inc. in 1925 did not comply with statutory requirements and because the Clerk lacked power to enter the default judgment in that case.
>
> (c) That the defendants had been misled by representations to the effect that the purpose of the suit was to facilitate the mortgage of the properties to the Federal Land Bank for the benefit of the plaintiffs.

The third point (c) was decided by the District Court against the plaintiffs and was not urged in the Circuit Court.

Petitioners take the position that they are entitled to the return of the real property and all the profits therefrom although they had not in effect paid one cent for it, because of the alleged lack of capacity of Central Cambalache, Inc. to enter into the original transaction or to acquire the property at execution sale and because of the alleged procedural defects.

The principal basis of Petitioners' contention is that Central Cambalache by virtue of the fact that it held and controlled over 500 acres of land which is prohibited by the Joint Resolution of Congress of May 1, 1900 could not legally have made the original loan secured by the mortgage which Petitioners' predecessor voluntarily contracted with the corporation.

ARGUMENT

I

The Questions Presented

The first question presented by Petitioners (Petition 2) is divisible into two parts:

(a) Whether the interpretation and application of Section 3 of Joint Resolution of Congress of May 1, 1900, are drawn in question, and (b) if so, may the question as to whether a corporation owns and controls more than 500 acres of land be raised collaterally by a person dealing with the corporation.

The Circuit Court of Appeals held (R. 412, 413) that steps taken to enforce the so-called Five Hundred Acre Law embodied in the Joint Resolution of May 1, 1900, are matters of local law since the Joint Resolution "affixed no direct consequences to disobedience of its land policy for Puerto Rico." In so holding the Circuit Court of Appeals followed the decision of this Court in *Puerto Rico* vs. *Rubert Hermanos, Inc.,* 309 U. S. 543. Therefore, the decision of the Supreme Court of Puerto Rico in this case is purely a decision on a point of local law, namely, the measures which may be taken to enforce the policy of Congress as set forth in the Joint Resolution of May 1, 1900.

The second and third questions presented (Petition 2) on their face involve solely the interpretation of local law and procedure by the Supreme Court of Puerto Rico.

To justify a review it is incumbent on Petitioners, therefore, to show as to all questions presented that the Supreme Court of Puerto Rico was clearly wrong. *Bonet* vs. *Yabucoa Sugar Co.,* 306 U. S. 505. This the petitioners have failed to do.

II

Central Cambalache, Inc., had the power to loan the money secured by mortgage and to collect the debt.

Appellants contend that Central Cambalache, Inc., lacked legal capacity to contract the loan made to Fernando González Cabeza, to accept mortgage security for the loan, and to collect the debt by legal action and execution of the judgment against real property of the debtor: (1) because it is prohibited by Joint Resolution of Congress of May 1, 1900 (the 500 Acre Law) and (2) because it is prohibited by its Articles of Incorporation.

The opinion of the Supreme Court on this point will be found at pages 279-283 of the Record and of the District Court at pages 34 and 35 of the Record.

Both courts held that the Corporation had the power to contract the loan, to levy execution on the judgment and acquire the properties at the execution sale.

(1) So far as the Joint Resolution above referred to is concerned, its own terminology seems to be too clear to admit of any doubt:

> "Corporations, however, may loan funds upon real estate security, and purchase real estate when necessary for the collection of loans, but they shall dispose of real estate so obtained within five years after receiving title."

(2) The contention that the Corporation lacked authority under its Articles of Incorporation to lend the money and lacked power to collect its loan is a matter purely of local law. The District Court held that the Corporation had power under its charter to contract the loan and collect it (R. 34). The Supreme Court upheld the lower court's decision (R. 279-283). The reasoning of the District Court is sound. Central Cambalache, Inc., was engaged in the business of producing sugar from sugar cane. The amount

of land which it might itself legally own for the purpose of growing cane was limited. But it had to have a supply of cane. Whether it assured this supply by financing farmers to grow cane or by lending money to a farmer to acquire land for that purpose would seem to make little difference. Article 4 of the Articles of Incorporation expressly covers the situation by providing that the Corporation was organized for the purpose of planting and acquiring sugar cane and the operation of said cane and its production "with all the negotiations required for the attainment of such objects such as the purchase and lease of lands." (R. 52). The lower court held that the loan here involved was in aid of these purposes.

Even if the loan had been *ultra vires* Fernando González Cabeza and his successors were not in a position to raise the question. He had voluntarily contracted with the Corporation and had received the benefits of the loan made by the Corporation. They could neither raise the question of *ultra vires* nor contest on that ground the right of the Corporation to collect the loan or realize on the security. (7 *Fletcher Cyclopedia Corporations* (Permanent Edition) § 3487, p. 643, and cases there cited. *Union Mutual Bank of St. Louis* v. *Mathews,* 98 U. S. 621. Note 125 ALR 1523.)

The Circuit Court (R. 412) correctly held that since Congress made no provision for the enforcement of the Joint Resolution of May 1, 1900, the matter of enforcement was entirely a matter of local law and that the Supreme Court of Puerto Rico, unless inescapably wrong, was the proper judge of whether or not the holding by a corporation of over 500 acres of agricultural land is subject to collateral attack. In so deciding the Circuit Court correctly followed the decision of this Court in *Puerto Rico* v. *Ruberi Hermanos, Inc.,* 309 U. S. 543, and an unbroken line of authorities of the Supreme Court of Puerto Rico extending back over a period of many years. If the Petitioners' contention were sustained, countless real property transactions entered into since 1900 would be upset and the entire economy of Puerto Rico disrupted.

That there are no persuasive considerations of public policy involved in this case is demonstrated by the very language of the Joint Resolution of Congress above quoted, which itself declares the public policy.

III

The alleged defects in the proceedings to collect the original loan.

This is a matter of local law as interpreted by the Supreme Court of the Territory.

A. The Summons.

This point is discussed at length in the opinion of the Supreme Court (R. 283-288). Section 89 of the Code of Civil Procedure provides that the summons must contain a direction that the defendant appear and answer within ten days. The summons only notified the defendants "that in case of your failure to appear and answer said complaint within ten days . . . the plaintiff may obtain judgment according to the prayer of the complaint" (R. 9-10). The court held that this was substantial compliance with the statute. The court also held that the summons complied with the requirement of the statute that the summons should state the sum for which judgment would be taken, since the amount demanded in the prayer had already been stated in an earlier part of the summons. This seems too clear for argument.

B. The entry of judgment.

The judgment is copied at page 76 of the Record. The action was for the collection of money. It was not a mortgage foreclosure proceeding. Therefore, the Clerk was authorized by Article 194 of the Code of Civil Procedure to enter judgment. The pertinent part of the judgment is copied in the complaint (R. 10-11). Judgment was entered

for "the amount of fifty-six thousand five hundred seventy-four dollars, and seven cents, specified in the summons, which is the total amount of the two loans above-mentioned, with their legal interest, as well as the interest that may accrue at the agreed rate until full payment of the amount and costs."

The judgment provided for interest at the "agreed" rate rather than the "legal" rate. The Supreme Court also covered this point at length (R. 288-299) discussing the Roman, Spanish and Puerto Rican jurisprudence. The court stated that even in a summary foreclosure proceeding, a judgment which awards more interest than that agreed upon does not give ground for reversal but only for modification, citing *Muñoz* v. *Nieves*, 53 PRR 331, and two California cases.

Here again the opinion of the Supreme Court would seem to be eminently sound.

C. The execution of the judgment.

(a) The contention that the execution of the judgment was fatally defective because it does not appear that personal property was first attached and sold.

It is alleged in the complaint that the Marshal executed the order of attachment "by attaching only the mortgaged properties" (R. 11).

The writ of execution directed the Marshal to satisfy the judgment out of personal property and should they be insufficient, then the real property (R. 80). There is no allegation nor any proof that there was personal property out of which the judgment could have been satisfied, or that the Marshal did not comply with his duty to attempt to find it. As is customary, the plaintiff indicated real property from which the judgment might be satisfied. The Supreme Court correctly held that the fact that in the writ of execution the Marshal was not required to satisfy the judgment first out of personal property was cured by the appearance of the attorney for the plaintiffs at the sale and requesting the sale of the real properties in one block. Moreover, the

writ actually did direct the Marshal to proceed first against the personal property (R. 80).

(b) The sale of the properties in one block instead of in separate pieces.

Attorney Lens Cuena appeared on behalf of the defendants at the sale and asked that the parcels be sold in one block, as "that was the best way to obtain a more profitable bid."

There is no allegation nor evidence that Attorney Lens Cuena was not authorized to represent the defendants. If the defendants were seriously attacking the representation they should at least have alleged and proven that no such authorization was given.

The contention that a defendant cannot authorize the sale of his properties in one block even if he wants to do so, is frivolous.

(c) The fact that more properties were sold on the sale than had been mortgaged (Point IV, Br. 19).

The answer is that this was not a foreclosure proceeding but an ordinary action to collect a debt. Execution in such an action may be had against *any* properties of the debtor.

IV

The deed of ratification

The Supreme Court, having held that there were no vital defects in the proceedings, stated that it was relieved from considering whether the deed of August 26, 1927, constitutes a ratification of a title.

The lower court, after having held that the proceedings were defective, decided that the defects, except with respect to the minor José Antonio, were cured by the ratification contained in the deed of August 26, 1927.

The heirs of Fernando González Cabeza had remained in possession after the public sale. They had some equipment

and plantings of cane. Oliver, Matienzo & Co., S. en C., agreed to pay them $28,670.00 for the equipment and cane, of which $9,625.78 was deducted to pay off a crop loan which they owed to Central Cambalache. Clause D of this agreement (R. 191) provides:

> "It is expressly agreed that Mrs. Elisa Campos and her children voluntarily waive and convey any other rights which they might have on the properties belonging to Oliver, Matienzo & Company, acquired by purchase at public auction and specifically the rights of homestead which they may have thereon, which waiver is made in favor of Oliver, Matienzo & Company, in consideration also of the amount received by the first, according to the act approved on March twelve, nineteen hundred and three."

This provision conclusively cures any defects that there may have been in the procedure in so far as everyone except the minor is concerned.

While the Supreme Court deemed it unnecessary to consider the deed it did observe that while José Antonio González Cabeza may not have been duly represented in the deed, he ratified it on becoming of age by accepting the benefits. José Antonio on becoming of age had mortgaged property purchased for him out of his share of the consideration received, for a loan of $500.00. The Supreme Court cited Section 1263 of the Civil Code as authority for the proposition that the minor by mortgaging the property after he had become of age thereby ratified the contract. This is a matter of interpretation of local law and is entirely reasonable. One who has accepted the benefits of a transaction is barred from later attacking the transaction itself.

Conclusion

The present case presents no question of law as to which there is a difference of opinion in the various Circuits. There is no serious contention that the decision of the Circuit Court is contrary to the decisions of this Court.

Petitioners present no new problem of public interest which requires determination. The decision of the Circuit Court conforms with the express public policy as declared by the Joint Resolution of Congress of May 1, 1900.

Practically all of the issues raised are questions of interpretation of local law and procedure as applied to specific facts. The only possible federal question is resolved by the express language of the federal statute which Petitioners ask this Court to interpret.

The petition for a writ of certiorari should be denied.

San Juan, P. R., January 27, 1947.

Respectfully submitted,

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